

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION NO. |
| |) | |
| v. |) | |
| |) | |
| UNITED STATES STEEL CORP. |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties against United States Steel Corp. ("U.S. Steel"), as a successor to certain liabilities of USS/KOBE Steel Company ("USS/KOBE"), for violations of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7401 et seq., the federally approved and enforceable Ohio State Implementation Plan ("Ohio SIP") established pursuant to the CAA, the Clean Water Act, as amended ("CWA"), 33 U.S.C. § 1251 et seq., and terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued

pursuant to the CWA, at a steel making facility in Lorain, Ohio ("Facility") formerly owned and operated by USS/KOBE and currently owned and operated by U.S. Steel.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c) and 1395 because the violations alleged herein occurred in this District and because the Defendant resides in this District.

NOTICES TO STATE

4. On December 31, 1998, U.S. EPA issued a Notice of Violation to USS/KOBE for violations of the CAA and the Ohio SIP, including the violations alleged herein. Pursuant to 42 U.S.C. §§ 7413(a)(1), U.S. EPA provided a copy of the Notice of Violation to the State of Ohio.

5. Notice of commencement of this action has been given to the State of Ohio as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

6. Defendant, U.S. Steel, is a Delaware corporation. Since approximately January 1, 2002, Defendant has owned and operated the Facility, which is located at 1807 East 28th Street, Lorain, Lorain County, Ohio. From approximately August 13, 1999 until January 1, 2002, the Facility

was owned and operated by Lorain Tubular Company LLC (“Lorain Tubular”). Prior to August 13, 1999, the Facility was part of a larger integrated steelmaking plant owned and operated by USS/KOBE. When it acquired the Facility, Lorain Tubular succeeded to certain liabilities of USS/KOBE, including environmental liabilities relating to the assets acquired by Lorain Tubular. When U.S. Steel acquired the Facility, it succeeded to certain liabilities of Lorain Tubular, including environmental liabilities that arose during operation of the Facility by USS/KOBE.

7. Defendant is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 502(5) of the CWA, 33 U.S.C. § 1362(5). At all times relevant to this complaint, USS/KOBE was a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY AND REGULATORY BACKGROUND

Clean Air Act

8. The Clean Air Act is designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

9. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of U.S. EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, requires U.S. EPA to promulgate national ambient air quality standards (“NAAQS”) requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated,

among other things, NAAQS for particulate matter ("PM") (now measured in the ambient air as particulate matter of a diameter of 10 micrometers or less (PM₁₀) and particulate matter of a diameter of 2.5 micrometers or less (PM_{2.5})). 40 C.F.R. §§ 50.6 - 50.7.

10. Under Section 107(d) of the CAA, 42 U.S.C. § 7497(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is referred to as an "attainment" area. An area that does not meet the NAAQS is referred to as a "nonattainment" area. An area that cannot be classified due to insufficient data is referred to as "unclassifiable."

11. At all times relevant to this complaint, Lorain County, where the Facility is located, has been designated as unclassifiable for PM-10. 40 C.F.R. § 81.336.

12. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to U.S. EPA for approval a State Implementation Plan ("SIP") that provides for the maintenance, implementation and enforcement of the NAAQS. In accordance with Section 110(a)(2) of the CAA, the State of Ohio submitted to U.S. EPA for approval OAC Rules 3745-17-08 and 3745-17-11 as part of the Ohio SIP. U.S. EPA approved these rules on May 27, 1994 with an effective date of June 27, 1994. 59 Fed. Reg. 27464.

13. OAC Rule 3745-17-08(A) provides that this rule shall apply to any fugitive dust source which is located within the areas identified in Appendix A of this rule. Appendix A includes the City of Lorain in Lorain County. OAC Rule 3745-17-08(B) provides in pertinent part that no person shall cause or permit any fugitive dust source to be operated without taking or installing reasonably available

control measures to prevent fugitive dust from becoming airborne. For purposes of OAC Rule 3745-17-08, reasonably available control measures include, but are not limited to, installation and use of hoods, fans, and other equipment to adequately enclose, contain, capture, vent and control the fugitive dust. Such equipment shall meet the following requirements: (a) the collection efficiency is sufficient to minimize or eliminate visible particulate emissions of fugitive dust at the point(s) of capture to the extent possible with good engineering design; and (b) the control equipment achieves an outlet emission rate of not greater than 0.030 grain of particulate emissions per dry standard cubic foot of exhaust gases or there are no visible particulate emissions from the exhaust stack(s), whichever is less stringent.

14. OAC Rule 3745-17-11(A) applies to any industrial operation, process, or activity which releases or may release particulate emissions into the ambient air except, among other things, the generation of fugitive dust which is subject to the requirements of OAC Rule 3745-17-08. OAC Rule 3745-17-11(B)(1) provides that any owner or operator of a source of particulate emissions which is located within, inter alia, Lorain County shall operate said source so that the particulate emissions do not exceed the allowable emission rate specified by "curve P-1" of "Figure II" or by "Table I", whichever is applicable under paragraph (A)(2) of this rule.

15. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on

which such notice of a violation is issued, the Administrator may ...

* * *

(C) bring a civil action in accordance with subsection (b) of the section.

16. Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1) and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action for injunctive relief and assessment of civil penalties against any person who has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413, and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, courts may assess civil penalties of up to \$25,000 per day for each violation occurring on or before January 30, 1997 and up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004.

Clean Water Act

17. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into a navigable water, except in compliance with, among other things, the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of U.S. EPA may issue an NPDES permit which authorizes the discharge of pollutants into waters of the

United States in compliance with applicable requirements and such conditions as the Administrator of U.S. EPA determines are necessary to carry out the provisions of the CWA.

20. The Administrator of the U.S. EPA may authorize a state to administer the NPDES permit program within that state pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1321(b). On March 11, 1974, pursuant to Section 402(b) of the CWA, U.S. EPA authorized the State of Ohio to administer the NPDES permit program in Ohio, and the State continues to administer the approved program. Pursuant to Sections 309 and 402(i) of the CWA, 33 U.S.C. §§ 1319 and 1342(i), U.S. EPA retains the authority to take action to enforce requirements of NPDES permits in Ohio.

21. Pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), whenever the Administrator of U.S. EPA finds that any person is in violation of any condition or limitation of an NPDES permit, including a permit issued by an authorized state, the Administrator may commence a civil action for injunctive relief and for assessment of civil penalties. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, courts may assess civil penalties of up to \$25,000 per day for each violation occurring on or before January 30, 1997 and up to \$27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004.

GENERAL ALLEGATIONS

22. USS/KOBE was an Ohio general partnership formed in 1989 as a joint venture by subsidiary holding companies of USX Corp. ("USX") and Kobe Steel. Effective on or about August 13, 1999, the two general partners constituting USS/KOBE were merged into Republic

Technologies International, LLC, and certain assets at the Facility, including the No. 3 Seamless Rotary Mill and the D-2 Landfill, were transferred to Lorain Tubular.

23. Lorain Tubular was a limited liability company formed as a joint venture by the holding companies of USX and Kobe Steel. On or about January 1, 2000, USX purchased the Kobe Steel interest in Lorain Tubular and Lorain Tubular became a wholly-owned subsidiary of USX.

24. On or about January 1, 2002, the assets of USX were divided between Marathon Oil Company and United States Steel Company, and Lorain Tubular was merged into United States Steel LLC (which became United States Steel Corp.), as part of the Tubular Products Division. The Facility was renamed as Lorain Pipe Mills, U. S. Tubular Products Division, U.S. Steel.

FIRST CLAIM FOR RELIEF
(CAA Violations)

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. At all times relevant to this complaint, USS/KOBE operated the No. 3 Seamless Rotary Mill at the Facility.

27. The No. 3 Seamless Rotary Mill is a fugitive dust source and a source of particulate emissions and as such is subject to the restrictions on fugitive dust set forth in the Ohio SIP at OAC Rule 3745-17-08 and/or the restrictions on particulate emissions set forth in the Ohio SIP at OAC Rule 3745-17-11.

28. From at least August 1997 through March 1999, USS/KOBE operated the No. 3 Seamless Rotary Mill without installing reasonably available control measures to prevent fugitive dust from becoming airborne. During this period, USS/KOBE did not eliminate visible emissions from the

No. 3 Seamless Rotary Mill, and the emissions from air pollution control equipment serving the No. 3 Seamless Rotary Mill exceeded 0.030 grain of particulate emissions per dry standard cubic foot of exhaust gases.

29. From at least August 1997 through March 1999, particulate emissions from the No. 3 Seamless Rotary Mill exceeded the allowable emission rate for the No. 3 Seamless Rotary Mill pursuant to curve P-1 of Figure II of OAC Rule 3745-17-11. During this same period, particulate emissions from the No. 3 Seamless Rotary Mill exceeded the allowable emission rate for the No. 3 Seamless Rotary Mill pursuant to Table I of OAC Rule 3745-17-11.

30. The acts and omissions referred to in paragraphs 28 and 29 above, constitute violations of OAC Rule 3745-17-08 or, in the alternative, OAC Rule 3745-17-11 of the Ohio SIP, and of the CAA.

31. As a result of the violations referred to in the preceding paragraph, Defendant is subject to injunctive relief pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). In addition, for each violation referred to in the preceding paragraph, Defendant is subject to civil penalties of up to \$27,500 per day, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF
(CWA Violations)

32. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

33. At all times relevant to this complaint, USS/KOBE owned and operated a wastewater treatment plant (the "Plant") at the Facility.

34. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, on September 30, 1994, the Ohio Environmental Protection Agency issued NPDES Permit No. 3ID00028 ID to USS/KOBE, with an effective date of November 1, 1994.

35. At all times relevant to this complaint, USS/KOBE “discharged” “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12) and 40 C.F.R. § 122.2 into the Black River through Outfall 3ID0002806 at the Facility. The source of the discharge from this outfall was the D-2 Landfill Leachate Treatment System at the Facility.

36. Outfall 3ID0002806 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

37. The Black River is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is part of the “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

38. The permit referred to in paragraph 34 above established specific effluent limits governing discharges of pollutants from Outfall 3ID0002806 at the plant, including daily concentration and loading limits and 30-day average concentration and loading limits for total phenol, Chemical Oxygen Demand (“COD”) and Total Organic Carbon (“TOC”) and daily concentration and loading limits for iron.

39. On various occasions from approximately December 1994 through November 1998, USS/KOBE discharged one or more of the following pollutants from Outfall 3ID0002806 to the Black River in violation of specific effluent limitations in its applicable NPDES permit: total phenol, COD, TOC and iron.

40. USS/KOBE's discharge of pollutants in violation of its NPDES permit violates Section 301 of the CWA, 33 U.S.C. § 1311.

41. As a result of the violations referred to in the preceeding paragraph, Defendant is subject to injunctive relief pursuant to Section 309(b) of the CWA. In addition, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is subject to civil penalties of up to \$25,000 per day for each such violation through January 30, 1997, and civil penalties of up to \$27,500 per day for each such violation occurring after January 30, 1997.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

- (1) Enjoin Defendant permanently from further violations of the Clean Air Act and Clean Water Act at the Facility;
- (2) Enjoin Defendant from emitting fugitive dust or particulate matter from the No. 3 Seamless Rotary Mill at the Facility in excess of applicable emission limits under OAC Rule 3745-17-08 or OAC Rule 3745-17-10;
- (3) Enjoin Defendant permanently from any discharge of pollutants except as expressly authorized by the applicable NPDES permit and the Clean Water Act;
- (4) Order Defendant to pay civil penalties of up to \$25,000 per day for each of the alleged violations of the Clean Air Act and Clean Water Act that occurred through January 30, 1997, and up to \$27,500 per day for each such violation after January 30, 1997;
- (5) Award Plaintiff its costs of this action; and,

(6) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section

STEVEN J. WILLEY (0025361)
Senior Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

GREGORY A. WHITE
United States Attorney
Northern District of Ohio

By:

STEVEN J. PAFFILAS
Bar No. 0037376
Assistant United States Attorney
Northern District of Ohio
801 West Superior Avenue, Suite 400,
Cleveland, Ohio 44113-1852

OF COUNSEL:

CHRISTINE M. LISZEWSKI

Associate Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency

77 W. Jackson Blvd. (C-14J)

Chicago, IL 60604-3590